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No. 01-1655

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID C. TARDIFF, *Petitioner,*

v.

CALIFORNIA DEPARTMENT OF HEALTH SERVICES, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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DAVID C. TARDIFF, *Petitioner,*

v.

CALIFORNIA DEPARTMENT OF HEALTH SERVICES, *Respondent.*

INTRODUCTION

Respondent California Department of Health Services respectfully requests that this Court deny the petition for writ of certiorari (petition) filed by David C. Tardiff (Tardiff). Denial of the petition is appropriate because the complaint filed in district court by Tardiff inappropriately sought district court review of a state court judgment. The district court correctly dismissed with prejudice because it may not exercise appellate jurisdiction over a state court decision, and the Ninth Circuit properly affirmed.

STATEMENT OF THE CASE

A. State Court Proceedings

The district court case was filed by Tardiff to collaterally attack an unpublished state court decision. He failed to file a direct petition for review in this Court from the decision of a state court of last resort. The district court's order summarizes

the state court proceedings in a section entitled, "Background." Appendix E to Petition (Appendix E), App. 21-27. Since the state court proceedings are germane to the district court's order, they are set forth here.

1. Municipal Court Proceedings

Kimberly Belshe, as Director (Director or Defendant Belshe) of the California Department of Health Services (Health Services), filed a complaint in Beverly Hills Municipal Court (Case No. 96C02721) on December 23, 1996, against attorney Tardiff and his former client, Janet Vallejo (Vallejo), after the Director discovered that Tardiff had obtained and disbursed two personal injury settlements on behalf of his Medi-Cal beneficiary clients, Vallejo and Ryan Thomas (Thomas), without giving the Director the statutorily mandated notices set forth in California Welfare and Institutions Code sections 14124.73, 14124.76, and 14124.79 which would have permitted the Director to recoup Medi-Cal's health care expenditures on behalf of Vallejo and Thomas. Appendix E, App. 21-22.[1/]

The parties filed cross-motions for summary judgment. Appendix E, App. 23. Following briefing and prior to the hearing, the parties stipulated that there were no material facts in dispute.[2/] *Id.* On December 10, 1998, the trial court granted the Director's motion for summary judgment and denied Tardiff and Vallejo's cross-motion for summary judgment. *Id.*

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1. Tardiff mistakenly asserts that the original case was filed by the State of California. Petition, p. 3.

2. Without citation, Tardiff sets forth a misleading paragraph of immaterial facts at page 12 of the petition.

The trial court ordered the Director's counsel to serve a notice of ruling. Appendix A to Petition, App. 1. The notice of ruling set forth the trial court's findings, including that

> (5) the required notices were not given by the attorney retained to assert the beneficiaries' claims, and the Director was, therefore, unable to perfect and satisfy her liens.

Appendix E, App. 24.[3/]

The trial court entered final judgment for the Director on January 29, 1999. Appendix E, App. 24.

2. Appellate Department Proceedings

Tardiff appealed to the Los Angeles County Superior Court Appellate Department (Case No. BV22295), claiming that the trial court erred in granting the Director's motion for summary judgment because

> (1) no notice of a Medi-Cal lien was given to [Tardiff or Vallejo] in the Vallejo matter; (2) a hospital lien is not effective without written notice; (3) to enforce a lien against a person without notice violates his right to due process; and (4) in the [Thomas] compromise case neither [Tardiff] nor the carrier had authority to dispense funds.

Appendix E, App. 24-25.

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3. Tardiff contends that the trial court's judgment "mentioned not a single word" concerning his lack of notice issue; however, the trial court's notice of ruling, which he failed to append, specifically addresses it. Petition, pp. 3, 6, 9.

On March 15, 2000, the Appellate Department affirmed the trial court in a 12-page unpublished memorandum opinion, rejecting all of Tardiff's claims. Appendix E, App. 25; Appendix B to Petition, App. 3-13. On April 12, 2000, the Appellate Department denied Tardiff's petition for rehearing after judgment or, in the alternative, certification to the California Court of Appeal. Appendix E, App. 25.

3. First California Supreme Court Proceedings

On May 2, 2000, Tardiff filed a petition for review in the California Supreme Court (Case No. S088003) which, on May 19, 2000, ordered the case transferred to the California Court of Appeal, Second Appellate District (Court of Appeal). Appendix E, App. 25.

4. Court of Appeal Proceedings

The Court of Appeal (Case No. B141591) considered and denied Tardiff's petition for writ of mandate-prohibition without opinion on May 31, 2000. Appendix E, App. 25.[4]

5. Second California Supreme Court Proceedings

From the Court of Appeal's decision, Tardiff filed a second petition for review to the California Supreme Court

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4. Tardiff's petition here wrongly contends that "[t]he California Court of Appeal and the California Supreme Court denied review." Petition, p. 4. As shown by the district court's order, this is inaccurate. The California Supreme Court took jurisdiction and transferred the case to the Court of Appeal, which ultimately denied his petition for writ of mandate-prohibition. Appendix E, App. 25.

(Case No. S089103), which denied review en banc on July 19, 2000. Appendix E, App. 25; Appendix D to Petition, App. 19.[5]

B. Federal Court Proceedings

1. District Court Proceedings

On July 7, 2000,[6] twelve days before the California Supreme Court denied Tardiff's second and final petition for review, Tardiff filed the instant 42 U.S.C. § 1983 complaint in federal district court against Health Services and its Director, as an individual. Appendix E, App. 25.[7] The complaint alleged that "Health Services' attempt to enforce its Medi-Cal lien against [him] without providing him notice of the existence of the lien before he disbursed settlement proceeds to his clients is violative of due process." *Id.*, App. 25-26.

On October 27, 2000, Health Services moved for dismissal of Tardiff's complaint on three grounds: (1) pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) the

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5. Although Tardiff appended a copy of the California Supreme Court's order denying review, this case does not involve a direct petition for review of a state court judgment.

6. Tardiff's typesetting of the district court's order erroneously changes the filing date in that court's findings from July 7, 2000, to July 1, 2000. Appendix E, App. 25.

7. Defendant Belshe was never served as an individual. Appendix E, App. 39. Tardiff's complaint made no specific claim against her. *Id.*, App. 40. The district court dismissed Defendant Belshe sua sponte, stating, "[A]ny amendment would be futile . . . any claim predicated on [Defendant Belshe's] enforcement of Medi-Cal liens against Plaintiff Tardiff would be res judicata." *Id.*

action is barred by the doctrine of res judicata and 12 U.S.C. § 1738's "full faith and credit" provisions, (2) pursuant to Federal Rules of Civil Procedure 12(b)(1) Health Services is cloaked with Eleventh Amendment sovereign immunity, and (3) pursuant to Federal Rule of Civil Procedure 12(b)(1) Health Services is not a "person" within the meaning of 42 U.S.C. § 1983. Appendix E, App. 26-27.

In a 19-page unpublished order dated February 6, 2001, the district court dismissed Tardiff's claims with prejudice. The district court ruled that Tardiff's action was barred by res judicata and the Rooker-Feldman doctrine. Appendix E, App. 20-40.[8/]

2. Ninth Circuit Court of Appeals Proceedings

On February 22, 2001, Tardiff filed a notice of appeal with the Ninth Circuit. Appendix F to Petition, App. 41. Following briefing by the parties, the Ninth Circuit reviewed de novo and filed its unpublished memorandum decision affirming the district court on October 24, 2001. Appendix G to Petition (Appendix G), App. 43.[9/]

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8. The district court also ruled that Tardiff's claims are jurisdictionally barred by the Eleventh Amendment and that Health Services is not a "person" under section 1983. *Id.*, App. 37-39.

9. Tardiff's typeset copy of the Ninth Circuit's memorandum decision erroneously lists the filing date as January 9, 2002; however, January 9, 2002, is the date it was filed by the district court after Tardiff's petition for rehearing en banc was denied by the Ninth Circuit on December 26, 2001. Appendix H to Petition (Appendix H), App. 45.

The Ninth Circuit ruled,

> Tardiff appeals pro se the judgment dismissing his 42 U.S.C. § 1983 action, which alleged that a state court judgment enforcing third-party Medi-Cal liens against him violated due process. . . . We review de novo a dismissal based on lack of subject matter jurisdiction . . . and we affirm.
>
> Tardiff's section 1983 action effectively seeks review of a state court judgment. The district court properly dismissed Tardiff's action because a district court may not exercise appellate jurisdiction over a state court decision.

Appendix G, App. 44.

Tardiff filed a petition for rehearing en banc, which was denied on December 26, 2001. Appendix H, App. 45.

QUESTIONS PRESENTED FOR REVIEW

Tardiff states that the "issue presented here is whether or not the due process question was actually litigated in the state courts according to the rules set out by the Ninth Circuit's own cases and furthermore what the term actually litigated means." Petition, p. i.

Health Services objects to Tardiff's framing of the question. The question presented is whether the Ninth Circuit properly affirmed, concluding that "The district court properly dismissed Tardiff's [section 1983] action because a district court may not exercise appellate jurisdiction over a state court decision." Appendix G, App. 44.

ARGUMENT

REVIEW SHOULD BE DENIED BECAUSE TARDIFF'S SECTION 1983 ACTION SOUGHT DISTRICT COURT REVIEW OF A STATE COURT JUDGMENT, AND A DISTRICT COURT MAY NOT EXERCISE APPELLATE JURISDICTION OVER A STATE COURT DECISION

Tardiff claims the basis for original jurisdiction of his federal section 1983 complaint was 28 U.S.C. § 1331, for violation of his due process rights. He is wrong. He misstates the facts in contending that the issue of due process was never actually litigated and decided in California's courts. Petition, pp. 5-10. To the contrary, the section 1983 claim Tardiff filed in district court springs from the failed contention that his due process rights were violated which he raised and litigated to final judgment at all levels of California's courts. Appendix E, App. 32. To the extent Tardiff "is asserting that he could not have brought a section 1983 claim in state court, [he] is mistaken." Appendix E, App. 32. Further, section 1983 does not override state preclusion law. *Migra v. Warren City School Dist. Bd. of Ed.*, 465 U.S. 75, 85 (1984).

A. Issue Preclusion Bars Tardiff's Federal Complaint

The district court correctly stated, "To determine the preclusive effect of a state court judgment, federal courts must 'refer to the preclusive law of the State in which judgment was rendered.'" Appendix E, App.28 (citing *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) and *Migra*, 465 U.S., at 77, n.1, 81, 85). Referring to *McCutchen v. City of Montclair*, 73 Cal.App.4th 1138, 1144 (1999), which quoted *Kelly v. Vons Companies, Inc.*, 67 Cal.App.4th 1329 (1998), the district court correctly set forth California's law regarding issue preclusion and applied the facts

to the law. Appendix E, App. 29-30. All five prongs of California's test for collateral estoppel effect are satisfied. *Id.*

Tardiff misleadingly contends here, as he did in the district court, that the trial court's judgment "mentioned not a single word concerning lack of notice of the Medi-Cal lien." Petition, pp. 3, 6, 9; Appendix E, App. 30. However, the district court rejected Tardiff's contention, quoting the trial court's express finding that

> [T]he required notices were not given by the attorney retained to assert the beneficiaries' claims, and the Director was, therefore, unable to perfect and satisfy her liens.

Appendix E, App. 23-24.

The district court further reasoned:

> The state court's judgment need not make an express rejection of [Tardiff's] arguments in order to have considered and rejected them. In the case of [Tardiff's] lack of notice argument, Tardiff admitted in his brief to the California Court of Appeal that the trial court had considered the issue when he stated, 'lack of notice was the principal if not the only issue in the trial proceedings . . .' [Citation omitted.] Because Plaintiff concedes that the trial court considered his lack of notice argument, it logically follows that when the court made its finding that

> notice was required to be given by Tardiff to the Director – not vice versa – the trial court necessarily rejected Tardiff's lack of notice argument.

Appendix E, App. 30.[10/]

Tardiff also erroneously claimed in the district court, as he does here, that the Appellate Division's memorandum opinion "'does not decide the due process issue, it merely restates the problem in a slightly different form.'" Petition, p. 7; Appendix E, App. 30. However, his reasoning is flawed.

Rejecting Tardiff's contention, the district court reasoned:

> In the case of [Tardiff's] due process argument, the trial court made no mention of due process in its judgment because [Tardiff] did not raise the due process issue until the case was before the Appellate Division. Once before the Appellate Division, the due process argument was raised, considered, and rejected by the Appellate Division, as its opinion indicates. That the Appellate Division's discussion of due process was not thorough enough to satisfy Tardiff does not render issue preclusion inapplicable in this case.

Appendix E, App. 30.

In sum, Tardiff's contention that his notice and due process rights were violated was litigated to final judgment in California's courts, and issue preclusion bars his federal complaint.

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10. Tardiff's typeset copy of the district court's order omits the underscores which were inserted for emphasis.

B. Claim Preclusion Bars Tardiff's Section 1983 Claim

Regarding claim preclusion, the district court accurately stated that Tardiff's section 1983 cause of action alleging violation of his due process right to notice "is the same due process right Tardiff litigated before the state courts as an affirmative defense to the Director's lien enforcement action." Appendix E, App. 32. The district court concluded that Tardiff was mistaken in asserting that he could not have brought a section 1983 claim in state court. *Id.* Citing *Clark v. Yosemite Community College District*, 785 F.2d 781 (1986), the district court quoted from the Ninth Circuit's application of California law, as follows, "'Although [Plaintiff] did not raise a section 1983 claim in the state proceeding, the doctrine of res judicata applies not only to those claims actually litigated in the first action but also to those which might have been litigated as part of that cause of action.'" Appendix E, App. 32-33.

Tardiff asserts here that he did not raise section 1983 in state court because he "felt that it was an inappropriate forum to present such an issue." Petition, p. 6. Tardiff's excuse is without merit. Section 1983 claims are heard in California's courts, and he could have raised it. *Clark*, 785 F.2d, at 786; Appendix E, App. 32-33. Plaintiff was not precluded in any manner from fully and fairly litigating his due process and civil rights claims in California's courts. Thus, claim preclusion bars Tardiff's section 1983 claim.

As to issue and claim preclusion, Tardiff cites *Jones v. City of Alton*, 757 F.2d 878 (1985) for the proposition that "[w]hile the purpose of the doctrine is to prevent a party from litigating the same issue twice, it should not be used to preclude a party from litigating the matter at all." Petition, p. 7. *Jones* held that federal claims and defenses are not precluded where a plaintiff tried to raise them in state proceedings but they were

improperly excluded. However, as the district court's order shows, Tardiff litigated notice and due process in the state courts. He was not precluded from doing so, and he could have litigated his section 1983 due process claim in state court. Thus, *Jones* is inapposite.

Tardiff's section 1983 claim is the same due process right he litigated and lost in state court, and it is barred by claim preclusion.

C. The Rooker-Feldman Doctrine Bars Federal Jurisdiction

The district court applied the Rooker-Feldman doctrine, which provides that inferior courts lack subject matter jurisdiction over cases that effectively seek review of state court judgments. Appendix E, App. 34-35; *Craig v. State Bar of California*, 141 F.3d 1353, 1354, n. 1 (1998). On this basis, the district court found Tardiff's claims barred because, in essence, Tardiff was attempting to obtain appellate review to effectively reverse the state court action or void its ruling. Appendix E, App. 36-37.

Here, Tardiff cites *Worldwide Church of God v. McNair*, 805 F.2d 888 (1986) for the premise that res judicata and the Rooker-Feldman doctrine are "inextricably intertwined," and "the crux of the question is whether there has already been actual consideration of a decision on the issue presented." Petition, p. 11. This case does not assist Tardiff, as the district court's order, which the Ninth Circuit reviewed de novo and affirmed, shows that Tardiff actually litigated notice and due process in the state courts. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). The district court ruled that "Tardiff's claims and prayers for relief are

inextricably intertwined with the state court's judgment" and "are in essence an attempt by Tardiff to obtain appellate review in this federal court of the state court's adjudication of the underlying action." Appendix E, App. 36-37.

Tardiff cites *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) and *Dusenbery v. United States*, 534 U.S. 161 (2002) for the proposition that notice is a fundamental requirement of due process. Petition, p. 12. These cases also do not avoid the bar of res judicata and the Rooker-Feldman doctrine since Tardiff was statutorily required to give notice to the Director, not vice versa, and he failed to do so. In addition, the district court's order affirmatively shows that Tardiff received actual notice and an opportunity to litigate the Director's action, and he fully availed himself of the opportunity by raising notice and due process in defense. California's courts considered and decided these issues, and final judgment was entered against him. For these reasons, the complaint is barred.

D. Review is Precluded by Res Judicata and the Rooker-Feldman Doctrine

For all of these reasons, Tardiff's assertion that "[t]he issue of due process was never actually litigated in the state courts as that term is defined by Ninth Circuit Court of Appeals decisions and by decisions of this [C]ourt" is plainly wrong. Petition, p. 5. The district court's well-reasoned order demonstrates that Tardiff raised and actually litigated notice and due process in California's courts, and he could have raised and litigated his section 1983 due process claim. The Ninth Circuit reviewed de novo, concluded that the matter had actually been litigated, and rightly affirmed because district courts may not exercise appellate jurisdiction over state courts. Tardiff simply disagrees with the result. Nevertheless, Tardiff's

suit is barred by res judicata and the Rooker-Feldman doctrine. Thus, the petition is properly denied.

CONCLUSION

Review must be denied because Tardiff's section 1983 action sought district court review of a res judicata state court judgment, and a district court may not exercise appellate jurisdiction over a state court decision.

Dated: July 10, 2002

Respectfully submitted,

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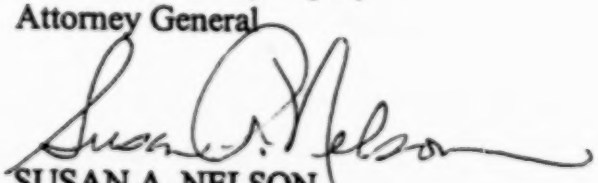

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